STATE OF MICHIGAN
BEFORE THE MICHIGAN JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

FORMAL COMPLAINT NO. 73

HON. JAMES P. NOECKER
Judge, 45th Circuit Court
Centreville, MI 49032
_____/

DECISION AND RECOMMENDATION

At a session of the Michigan Judicial Tenure Commission, held on August 4, 2004, at which the following Commissioners were

PRESENT: James Mick Middaugh, Chairperson
Hon. Barry M. Grant, Vice Chairperson
Richard Simonson, Secretary
Henry Baskin, Esq.
Carole L. Chiamp, Esq.
Hon. James C. Kingsley
Hon. Kathleen J. McCann
Hon. Jeanne Stempien
Hon. Michael J. Talbot

I. INTRODUCTION

On April 30, 2004, the Michigan Judicial Tenure Commission ("Commission") received findings of fact and conclusions of law from the master appointed by the Supreme Court to hear the evidence in this matter. Having reviewed that report, all the exhibits, and the briefs, and having considered the oral arguments of counsel, the Commission adopts the master's report. The Commission concludes, as did the master, that Judge James Noecker ("Respondent") failed to credibly report the events of March 12, 2003, including while under oath in these proceedings, and engaged in misconduct contrary to the judicial canons. Accordingly, the Commission

recommends that the Supreme Court remove Respondent from the office of judge of the 45th circuit court.

II. PROCEDURAL BACKGROUND

A. Factual Background

Respondent is a judge of the 45th Circuit Court, St. Joseph County, Michigan. At approximately 5:20 p.m. on March 12, 2003, he drove into the parking lot of the Klinger Lake Party Store at the northwest corner of US-12 and Klinger Lake Road, and collided with the building, causing $15,000 - $20,000 in damages. Evidence at the scene and a blood alcohol test given two hours later indicated that Respondent had been drinking.

B. Procedural background

On August 20, 2003, the Commission filed a three-count complaint against the Hon. James P. Noecker ("Respondent"), 45th Circuit Court Judge, Centreville, Michigan. Count I of the complaint alleged that Respondent had persistently abused alcohol, and that the work of the court had suffered as a result. Count II alleged that Respondent had consumed alcohol prior to an automobile collision at the Klinger Lake Party Store on March 12, 2003, and that alcohol was a factor in that collision. Count III alleged that Respondent had made false statements to the Commission.

The Respondent filed an Answer on or about September 16, 2003. The Michigan Supreme Court entered an Order on September 3, 2003 appointing retired 2nd Circuit Court Judge John N. Fields to serve as master in this case. Various telephone conference calls between counsel and the master, a pre-trial conference and hearings, and a series of public hearings were held. Counsel stipulated (a) to submit written closing arguments; (b) to submit proposed

findings of fact and conclusions of law; (c) to have the right to file a rebuttal argument; and (d) to extend the period within which the master shall submit his report to April 30, 2004.

On April 30, 2004, the master filed his report, finding that Respondent had engaged in the judicial misconduct alleged in the formal complaint. A copy of the master's report is appended to this Decision and Recommendation as Attachment A. Based on the findings of fact and conclusions of law contained in that report, the Commission filed a petition for the interim suspension of the Respondent on May 4, 2004. The Supreme Court granted that petition on May 28, 2004, effective June 1, 2004. As noted, the Commission adopts the master's report.

III. STANDARD OF PROOF

The standard of proof in judicial disciplinary matters is by the preponderance of the evidence. *In re Ferrara*, 458 Mich 350, 360 (1998).

IV. DISCIPLINARY ANALYSIS

A. *Brown* factors

The Michigan Supreme Court set forth the criteria for assessing proposed sanctions in *In re Brown*, 461 Mich 1291, 1292-1293 (1999). A discussion of each relevant factor follows.

(a) misconduct that is part of a pattern or practice is more serious than an isolated instance of misconduct.

Respondent has a history of alcohol abuse. As a result of that abuse, Respondent engaged in a persistent pattern of administrative failures. During the course of this official investigation, he made a series of conflicting, often incredible, statements to the police, the media, and the Commission. Respondent misled the master regarding his consumption of

alcohol prior to the March 12, 2003, collision. Respondent's conduct has had a negative impact on the judiciary and interfered with the proper functioning of the disciplinary system.

(b) misconduct on the bench is usually more serious than the same misconduct off the bench

Respondent's abuse of alcohol, even when it occurred off-the-bench, had an impact on his ability to hear matters, render timely decisions and file required reports with the State Court Administrative Office.

(c) misconduct that is prejudicial to the actual administration of justice is more serious than misconduct that is prejudicial only to the appearance of propriety

Respondent's abuse of alcohol, the impact on the administration of his court, and his inaccurate statements regarding the collision, adversely affected the actual administration of justice.

(d) misconduct that does not implicate the actual administration of justice, or its appearance of impropriety, is less serious than misconduct that does

Respondent's involvement in the collision, his misrepresentations to the police, and the impact of alcohol on the performance of his judicial duties implicated the actual administration of justice and created an appearance of impropriety.

(e) misconduct that occurs spontaneously is less serious than misconduct that is premeditated or deliberated

Respondent attempted to conceal that he had been drinking prior to the collision. His version of events was not consistent with eyewitness accounts, and he was not candid with the

police or the Commission. His pattern of conduct, particularly his conflicting and increasingly incredible explanations, was more egregious than conduct which occurs spontaneously.

(f) misconduct that undermines the ability of the justice system to discover the truth of what occurred in a legal controversy, or to reach the most just result in such a case, is more serious than misconduct that merely delays such discovery

Respondent did not give an accurate or credible explanation of his conduct during the course of the Commission's official investigation into this matter, including while he was under oath during the hearing on the formal complaint. Respondent's conduct has had a negative impact on the judiciary and interfered with the proper functioning of the disciplinary system.

(g). Additional Factors

The Supreme Court stated that factors enumerated in *Brown* were not exclusive and recognized the Commission's ability to consider other "appropriate standards." *Id*, at 1293. The Commission has accordingly also considered Respondent's discipline record, his reputation, and his years of experience, which are additional factors listed by the American Judicature Society.[1]

Respondent has had extensive prior involvement with the disciplinary system. He was admonished by the Commission for taking some sixteen months to decide a divorce case following completion of trial. He was admonished for taking more than a year to decide a motion to withdraw a guilty plea, and for failing to file any of the required MCR 8.107 reports in 1991. Respondent was also admonished in four additional matters, which included failure to timely decide applications for leave to appeal and persistent failure to file MCR 8.107 reports. Respondent was further admonished for failing to respond to a motion for re-sentencing.

[1] "How Judicial Conduct Commissions Work," American Judicature Society, 1999, p 15-16.

Respondent has been on the bench for over 23 years, and has been a public servant for even longer. His extensive judicial experience is another aggravating factor in evaluating his misconduct, since he is well aware of the conduct expected of a judge.

B. Respondent should be removed from office

1. Respondent's failure to be truthful requires his removal

Respondent has been less than candid regarding his actions the night of March 12, 2003. He misled the police, he was not forthcoming under oath to the Commission, and he failed to offer credible testimony while under oath in the public hearing.

In *In re Ferrara, supra*, the respondent made numerous half-truths and misleading statements to the master. She also falsified an exhibit and tried to have it received into evidence. In ordering the respondent's removal from office, the Supreme Court spoke about the significance of that misconduct as follows:

> Her statements to the press and the public, as well as to the Master and this Court, have clearly prejudiced the administration of justice, evidence a fundamental lack of respect for the truth-seeking process, and, furthermore, if left unrebuked, threaten to severely compromise the public's confidence in the judiciary's integrity. Accordingly, we find Respondent's actions to constitute misconduct in violation of Canons 1, 2A, 2B and MCR 9.205(C)(4). [*Id.*, 458 Mich at 364-365.]

In *In the Matter of Ryman*, 394 Mich 637 (1975), the respondent continued practicing law after becoming a judge. In the hearing on the formal complaint, the respondent was untruthful before the master about his continued law practice. He also misled the State Bar Grievance Board (the attorney discipline board of its time). The Supreme Court agreed with the Commission's findings, and removed the respondent from office, declining even to allow the filing of a motion for rehearing.

The Michigan Supreme Court also suspended a judge for six months for, among other things, making false statements to police. The judge was interviewed in connection with a criminal investigation and made false statements. The Court took this disciplinary action even though the respondent had provided correct information to the police two days later. *In re Chrzanowski*, 465 Mich 468, 471, 490 (2001).

The law of other jurisdictions is similar. A New York State judge was removed from office for promising a former political leader that a case would be adjourned at his request and for exacerbating his misconduct by not being candid with the FBI. *In re Levine*, 545 NE 2d 1205 (1989). A judge was removed for a variety of improper conduct which was ". . . compounded further by petitioner's lack of candor . . ." with respect to the motivation underlying his actions, including testimony that was evasive, incredible and false. *In Matter of Gelfand*, 70 NY2d 211, 215 (1987). In *In re Leon*, 440 So2d 1267 (Fla 1983), the respondent failed to tell the truth on several occasions, and the case focused on that conduct which involved Respondent's falsehoods made to the commission in an *ex parte* communication with another judge. While the respondent later recanted his misstatements, the Florida Supreme Court removed the judge, stating: "The integrity of the judicial system, the faith and confidence of the people in the judicial process, and the faith of the people in the particular judge are all affected by the false statements of a judge." *Id.,* 440 So2d at 1269.

Misconduct charges lodged against Florida Judge Irwin Berkowitz involved election campaign improprieties, misuse of accounts while practicing law and "giving willfully deceptive testimony" before the Florida Judicial Qualifications Commission. *In re Berkowitz*, 522 So2d 843 (Fla 1988). In removing Judge Berkowitz, the Florida Supreme Court noted that the commission " . . . found that Berkowitz's willful deception by itself, sufficient to warrant

removal." *Id.,* 522 So2d at 843, (emphasis added). The Florida Supreme Court agreed that not telling the truth to the commission was very serious and quoted from the excerpt in *In re Leon, supra*, about the adverse effects of a judge making false statements. *In re Berkowitz*, *supra*, 522 So2d at 843.

The Louisiana Supreme Court recently removed a judge for campaign misconduct and not being truthful to the commission, even though the respondent belatedly told the truth. The court noted that "lying to the commission" in a sworn statement, which was part of an investigation, was conduct the Louisiana Supreme Court would not tolerate. *In re King*, 857 So 2d 432, 449 (2003). In the case at bar, Respondent stated in his answer to the 28-day letter (Exhibit 51) that he had not been drinking before the collision. He denied that alcohol was a factor in the accident. He gave a similar answer to the formal complaint. Witnesses to the accident, however, indicated that Respondent's face was red, his gait was wobbly, and his manner of walking indicated that he had been drinking, and a blood alcohol test done two hours after the collision revealed a blood alcohol level of .10. The master found, and we agree, that Respondent's claim that he had not been drinking was not credible.

2. Respondent's delays caused a deleterious effect on the administration of justice in St. Joseph County.

Delay in handling matters and docket management was addressed by the Michigan Supreme Court in *In re Hathaway*, 464 Mich 672 (2001) and *In re Seitz*, 441 Mich 590 (1993). In *Seitz*, the Respondent, among other things, neglected the adoption docket and refused to respond to requests by the SCAO. The Supreme Court removed Judge Seitz and adopted the Commission's findings as follows:

> The Master found and the Commission agreed that Judge Seitz's behavior in the handling of the adoption cases constituted misconduct in office. More specifically, the Commission found a persistent failure to perform judicial duties pursuant to MCR 9.205(C)(2); . . . a violation of the high standards of conduct necessary to preserve the integrity of the judiciary pursuant to Canon 1 of the Code of Judicial Conduct; a failure to dispose of business promptly contrary to Canon 3A(5); and a persistent failure to diligently discharge his administrative responsibilities, maintain professional competence and judicial administration . . . contrary to Canon 3B(1). [*Seitz*, 441 Mich at 620-621. (Footnotes omitted).]

Similarly, in *Hathaway*, 464 Mich at 681, the Court imposed a six-month suspension without pay, quoting approvingly from the Commission's findings:

> Respondent's constant and repeated adjournments of proceedings without good cause, as exemplified in the case of *People v Ketchings*, as well as repeated unnecessary and unexcused absences from judicial responsibilities during normal court hours were inappropriate. *Likewise, Respondent's overall lack of industry and proper management of her court docket as well as an unwillingness to take corrective action or accept constructive suggestions or assistance to improve case management, constituted a hindrance to the administration of justice and gave the appearance of impropriety*, all contrary to Canons 1 and 3 of the Code of Judicial Conduct and MCR 9.205(A) and (C)(2) and (4). [*Id.*, emphasis supplied.]

Respondent emphasizes that the Request for Investigation in this case originated with the State Court Administrative Office, and not with a lawyer, litigant, or other participant in the judicial system. Similarly, a number of attorneys testified favorably on Respondent's behalf, noting his dedication, intelligence, and accessibility. With all due respect to those witnesses and to Respondent's position, the testimony does not change the fact that the docket and the public suffered.

In *In re Ferrara, supra*, respondent, who was charged with making anti-Black and anti-Arab comments, nonetheless was able to produce a number of witnesses who were African-American or of Arab descent who testified that they saw no discriminatory conduct and heard no discriminatory language from her. *Id.*, 458 Mich at 357. However, what was at issue in *Ferrara* was not what those witnesses *did* ***not*** hear but, rather, what other witnesses heard.

Similarly, in the case at bar, regardless of the glowing reports from a few attorneys, the overwhelming evidence is that the docket suffered, and that it did so as a result of Respondent's failure or inability to do his work. James Hughes, the regional administrator for the State Court Administrative Office testified that he spent more time with Respondent because of delays and docket management problems than he had ever spent with any other judge in his region. There was evidence that Respondent had a far higher number of cases over two years old than other similarly situated judges, and that Respondent had a much larger backlog of old cases than other similarly situated judges.

Other jurisdictions have imposed discipline for repeated, unjustified delay in deciding cases. Discipline has extended to include removal in cases with other exacerbating circumstances. *Matter of Lenney*, 522 NE2d 38 (NY, 1988). *See also: Matter of Anderson*, 252 NW2d 592 (Minn, 1977).

In *Seitz*, the Supreme Court also condemned failure to file required reports despite repeated reminders from the State Court Administrative Office:

> The Commission found that this behavior constituted conduct clearly prejudicial to the administration of justice contrary to MCR 9.205(C)(4); a failure to discharge administrative responsibilities diligently and to facilitate the performance of the administrative responsibilities of court officials contrary to Canon 3B(1) of the Code of Judicial Conduct, *see In re Carstensen*, 316 NW2d 889 (Iowa, 1981); and a violation of MCR 8.107.
>
> This is another factually undisputed charge of misconduct for failure to comply with an explicit routine administrative task. We agree with the Commission's finding of misconduct and accept the recommendation that it should be the subject of disciplinary action. [*Seitz, supra,* 441 Mich 622-623 (citations omitted).]

In Matter of Dearman, the South Carolina Supreme Court removed a magistrate for habitual intemperance. 287 SE2d 921; 277 SC 394 (1982). In the present matter, Respondent

was also charged with habitual intemperance, a charge which the Master sustained. Respondent is guilty of repeated serious misconduct which requires his removal from office.

B. Costs

As previously noted, the Supreme Court has stated that the factors specifically enumerated in *Brown* were not exclusive. The Commission can consider other "appropriate standards." From time-to-time, the Commission has recommended that costs be imposed against respondents, but has thus far not adopted any standard for doing so.

In Michigan, there is no specific court rule or statutory provision for imposing costs or restitution in judicial disciplinary matters. However, the Supreme Court has done so on several occasions. In imposing discipline in the very first formal complaint, over thirty years ago,[2] the Court imposed $1,000 in costs as partial reimbursement for the cost of the proceedings, in addition to the public censure of the respondent.[3] In Formal Complaint No. 5, *In re Edgar*, and Formal Complaint No. 6, *In re Blodgett*, the Court ordered public censures and $1,500 and $1,000 costs, respectively, as partial reimbursement of the costs of the proceedings.[4] *See too, In re Cooley,* 454 Mich 1215 (1997). More recently, the Court ordered the respondents in *In re Trudel*, 468 Mich 1244 (2003) and in *In re Thompson*, ___ Mich ___ (MSC Docket No. 124399, released July 9, 2004) to pay the Commission costs in the amounts of $12,777.33 and $11,117.32, respectively.

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[2] Formal Complaint No 1, *In re Somers*, 384 Mich 320 (1971).

[3] The Court ordered that the costs be paid to the Clerk of the Supreme Court. The order for costs was apparently entered separately from the Court's opinion, as it is not included in the text of the opinion found at 384 Mich 320. Accordingly, a copy of the Court's order is appended to this Decision as Attachment B.

[4] Interestingly, these two cases were never published in the official volumes of the Michigan Reporter. In both cases, the Court ordered the respondent to appear before it "for the administration of censure and the determination of punishment." Copies of both orders are appended as Attachments C and D respectively.

In so recommending, the Commission adopts the following standard for determining whether to impose costs and expenses as a part of a disciplinary action: conduct involving fraud, deceit, intentional misrepresentation, or misleading statements to the Commission, its investigators, the Master or the Supreme Court.

This standard was implicit in cases such as *Trudel, supra*, 468 Mich 1244, where the Respondent falsely applied for worker's compensation benefits, and used his sick time to treat himself to extended vacations in California. That type of fraud on the public warranted the imposition of costs in that case.

Similarly, in *In re Chrzanowski, supra*, 465 Mich 468, the respondent was suspended without pay, but no further costs were ordered. Although the respondent made false statements to the police in the course of the investigation of a murder case, she corrected those false statements within a matter of days, and there was never any reason to believe that the investigatory process was delayed or otherwise interfered with. In *In re Thompson*, __ Mich __ (MSC Docket No. 124399, released July 9, 2004), *supra*, the Court found that the respondent had made misrepresentations to a state agency and to the Michigan Supreme Court. His statements were purposely misleading and false, and our Supreme Court concluded that costs were appropriate.

Respondent argues here, as have respondent judges in other jurisdictions, that imposition of financial sanctions is specifically prohibited if not provided by statute. The courts have routinely rejected such positions. In a leading case, *Matter of Cieminski*, 270 NW2d 321 (ND 1978), Judge Cieminski contended the North Dakota Supreme Court lacked authority to impose costs against him in light of a statute prohibiting an award of costs, that costs could be awarded

only to the extent authorized by statute, and in the absence of a statute governing disciplinary cases, no costs could be assessed. The North Dakota Supreme Court found:

> Disciplinary proceedings are neither civil nor criminal, consequently, the rules pertaining to either do not necessarily apply. Specifically, Rule 54(e), NDRCivP, pertaining to costs and disbursements, does not apply for several reasons. Initially, Rule 54(e) is predicated on the common practice that the prevailing party is entitled to its costs and disbursements. As stated earlier, ***assessment of costs is a part of the disciplinary action and is not the same as awarding costs to either party*** as prohibited by sec. 27-23-11, NDCC, or as contemplated by Rule 54(e), NDRCivP. *Id.* at 334-335. [*Id.*, Emphasis added.]

The court further noted:

> The assessment of costs as a part of a disciplinary action is more than a censure, less than a suspension, but has a useful purpose and serves as a deterrent to conduct not in harmony with the Code of Judicial Conduct. [*Id*, at 335.]

In drawing its conclusion, the court cited the well-established body of law holding that authorization to censure or remove implicitly includes the authority to impose lesser sanctions and considered the imposition of costs a lesser-included sanction. *Id* at 333-334.

We respectfully disagree with our dissenting colleagues' suggestion that the word "censure" in Const 1963, art 6, § 30, cannot be read as broadly as the word "discipline" used in North Dakota constitutional and statutory law. *Cieminski*, *supra.* Const 1963, art 6, § 30, expressly gives our Supreme court the power to "censure," "suspend," "retire or remove" a judge for misconduct or failure to perform his duties, language that contemplates various forms of discipline. As the partial dissent recognizes, our Supreme Court has imposed costs as part of the overall sanction in other cases, cases which we believe involved conduct less harmful to the judiciary than that found here.

The Commission agrees that the imposition of costs on a respondent is part of the sanction itself, not a collateral measure that needs specific legislative or court rule authorization. The Commission accepts the affidavit of Commission senior administrative assistant, Camella Thompson, to establish the amount of costs incurred in the prosecution of this matter. No objection was offered to the affidavit, and it was received into evidence. Accordingly, the Commission takes judicial notice of its records and determines that it has incurred expenses in the amount of $22,572.76 solely as the result of having to prosecute this matter to conclusion before the master. Inasmuch as the master found that Respondent had committed judicial misconduct, a finding with which the Commission agrees, and the Commission is making a recommendation of discipline to the Supreme Court, Respondent is the party who should bear the cost of prosecution.

V. RECOMMENDATION

It is recommended that the Michigan Supreme Court enter an order finding judicial misconduct as set forth above, including misconduct in office and conduct clearly prejudicial to the administration of justice, **REMOVE** the Honorable James Noecker from the office of judge of the 45th circuit court, and order him to reimburse the Commission for the actual costs stemming from this case in the amount of $22,572.76.

STATE OF MICHIGAN
JUDICIAL TENURE COMMISSION

James Mick Middaugh, Chairperson

Hon. Barry M. Grant, Vice Chairperson

Richard D. Simonson, Secretary

Henry Baskin, Esq.

Hon. James C. Kingsley

Hon. Michael J. Talbot

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STATE OF MICHIGAN
BEFORE THE MICHIGAN JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

FORMAL COMPLAINT NO. 73

HON. JAMES P. NOECKER
Judge, 45th Circuit Court
Centreville, MI 49032

/

Concurring Opinion

We concur in the majority opinion and in the recommendation that Respondent be removed from office, but write separately because we would recommend that Respondent be ordered to pay both the costs of his prosecution and also the costs incurred by the taxpayers, if any, for visiting judges who have replaced him during his suspension.

After the master found evidence of misconduct in this case, the Commission petitioned for Respondent's interim suspension. On June 1, 2004, by order of our Supreme Court, the Commission's petition for interim suspension was granted and Respondent was suspended with pay. We believe that the dynamic of these proceedings shifted at that time. As a result of that order, the 45th circuit court has had to rely on visiting judges, and the taxpayers may have been compelled to pay costs for Respondent's replacement.[1] We are concerned about the lack of incentive for a respondent to cooperate with this process and even to drag out the proceedings because to do so is financially advantageous. When judges are suspended with pay after a finding of misconduct, we believe they should be on notice that they may need to account for any

[1] We recognize that the cost of replacing a suspended judge will vary from case to case and will depend, in some measure, on the size of the particular court at issue. In some instances the taxpayers may only incur the cost of parking or mileage, in others the taxpayers may need to pay a wage differential. A determination of those actual costs must be determined on a case by case basis. In any case, we do not believe that the burden of paying those costs should be placed on the taxpayers if the judge is ultimately removed from office.

unwarranted expense to the taxpayers in the event that finding is upheld and removal from office is ultimately ordered. Under the circumstances here, we find no rationale to justify placing a burden on the taxpayers for both the cost of Respondent's salary during his suspension and the costs incurred because visiting judges were needed to replace him. Thus, in addition to the censure recommended by the majority opinion, we would also recommend that the matter be referred to the Supreme Court Administrator's Office for a determination of the costs incurred for visiting judges after Respondent's June 1, 2004, suspension.

STATE OF MICHIGAN
JUDICIAL TENURE COMMISSION

James Mick Middaugh, Chairperson

Richard D. Simonson, Secretary

Hon. Michael J. Talbot

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STATE OF MICHIGAN

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COMPLAINT AGAINST:

FORMAL COMPLAINT NO. 73

HON. JAMES P. NOECKER
Judge, 45th Circuit Court
Centreville, MI 49032
/

Concurring in Part, Dissenting in Part

We agree with the majority in the findings of fact and conclusions of law that adopt the master's report. We recommend Respondent's removal from office as the appropriate sanction for his misconduct.

We depart from the majority's recommendation of additional sanctions in the form of actual costs and expenses incurred investigating and prosecuting the formal complaint. A Michigan judge who is facing discipline should be able to look to the constitution, the statutes and/or the court rules to determine the possible sanctions. That judge would not discover in codified form a provision that held the judge responsible for actual costs and expenses as a possible disciplinary sanction.

It is not the role of the Judicial Tenure Commission to impose sanctions; that is the exclusive power of the Supreme Court. However, that power is exercised on the recommendation of the commission. Const. 1963 Art 6, § 30. The majority admits that there is neither a specific court rule nor statutory provision for imposing costs or restitution in a judicial discipline matter. Our constitution does not provide for fines, costs or expenses as a penalty for misconduct. The Michigan Constitution provides, *inter alia*, that "**the Supreme Court may censure, suspend with or without**

salary, retire or remove a judge." 1963 Const. Art 6 §30.

Michigan's constitution provides that the Supreme Court shall make rules to implement §30 and provide rules for confidentiality and privileges. A historical review of the court rules shows that cost sanctions were never formulated in a rule.

Judicial disciplinary proceedings are neither civil nor criminal; they are *sui generis*. The former court rules, 1963 GCR 932, *et seq*, did not make any provision for costs and expenses. The Michigan Court Rules of 1985, including recent amendments, do not mention costs, attorney fees or expenses in judicial disciplinary proceedings.

MCR 1.103 provides that rules stated to be applicable only in a specific court or only to a specific type of proceeding apply only to that court or proceeding. In Michigan, the judge has notice of the type of sanctions available by constitution and court rule. The constitution specifies sanctions as censure, suspension with or without salary, retirement or removal. The language of the court rules is identical to the constitution except in grammatical form.

MCR 9.205(B) defines the actions to which a judge is subject:

> **Grounds for Action**. *A judge is subject to censure, suspension with or without pay, retirement, or removal. . .*

MCR 9.225 applies to the decision of the Supreme Court in disciplinary proceedings. The Supreme Court is guided by our constitution which, as noted, does not include any financial penalties other than withholding a judge's salary.

The current version of MCR 9.225 became effective January 21, 2003. It replaced the former rule of 1985, which read that the Supreme Court "may direct censure, removal, retirement, suspension ***or other disciplinary action***" (emphasis added). It is significant that the rule removed the

option of "other disciplinary action."

Although Michigan recognizes that judicial disciplinary proceedings are *sui generis*[1], a brief discussion about attorney grievance procedures is helpful. When adopting the 1985 court rules applicable to the Attorney Grievance Commission, the Supreme Court approved a specific court rule for the recovery of costs and actual expenses from disciplined attorneys in MCR 9.128.

It is not an oversight that costs and expenses were allowed by the Supreme Court in attorney grievance proceedings but not in judicial proceedings. The assessment of costs in attorney disciplinary proceedings has an identifiable purpose. The Attorney Grievance Commission is funded through the private funds of its members. The return of funds to the State Bar is critical to its ongoing existence. The funding of judicial discipline is included in the legislative appropriation for the Supreme Court. The Judicial Tenure Commission provides a public service as a constitutional body whose powers are derived from the state constitution.

The constitution and MCR 9.205 are clear and unambiguous. A judge in Michigan faces censure, suspension with or without pay, retirement or removal as possible sanctions. The rule comports with the plain language of the constitution which would prevent the imposition of actual costs and expenses as a penalty. If the Supreme Court wanted a court rule that included the sanction of costs and/or expenses, it would have enacted one, assuming the rule also comported with Article 6, §30 of the 1963 Michigan Constitution.

The majority opinion refers to several other state jurisdictions for persuasive authority for its position on costs. The majority relies on a 1978 decision from North Dakota, *In re Cieminski*, 270 NW2d 321 (1978), to support its position that a court rule, statute or the plain language of the

[1] *In re Jenkins*, 437 Mich 15, 465 NW2d 317 (1991).

constitution is not necessary to establish authority to access costs.

This case needs to be closely analyzed. First and foremost, the case provides that costs can be imposed as a lesser sanction than removal or greater sanction than censure, and not as a blanket endorsement of costs for disciplined judges. Further, there was constitutional authority for the imposition of costs which distinguishes it from Michigan law.

The complaint in *Cieminski* was brought pursuant to the North Dakota Constitution and Rule 25 of the Judicial Qualifications Commission, which, according to the reported case, was based upon the North Dakota Century Code. The North Dakota Constitution provided:

> The legislative assembly may provide for the ***retirement, discipline*** **or** ***removal*** of judges. Section 96, Art. IV (emphasis added).

"Discipline" is a broad term that could encompass any manner of sanction. Rule 25 of the Commission, entitled "Decision by the Supreme Court," directed the Supreme Court to impose censure, removal, retirement, suspension, [or] ***other disciplinary action***" (emphasis added). The rules in North Dakota merely defined the reference to "discipline" in the state's constitution. There is no reference to "other discipline" in the North Dakota statute.

The respondent judge in *Cieminski* argued that the restrictive language of the statute prevented an assessment of costs. The authority existed expressly by constitution and court rule. The North Dakota rules directly reflect the mandate of the North Dakota Constitution. It is the nature of the constitutionally granted authority that differentiates North Dakota from Michigan and *In re Cieminski* from this case.

Massachusetts allows costs and fees in judicial disciplinary proceedings but has a specific statute authorizing the commission to recommend an assessment of costs and expenses. ALM GL

ch. 211C of §8. Michigan lacks a similar statute.

In the matter of Anderson, 252 NW2d 592 (Minn 1977), suspension was objected to as not specifically delineated by law. The Minnesota Constitution at Article 6, §9, provided that the legislature has the power to provide for the retirement, removal or **other discipline** of a judge (emphasis added). The Michigan Constitution does not provide for "other discipline."

The Arizona Supreme Court *In the Matter of Hon. Michael C. Nelson*, 86 P3d 374 (AZ 2004), found that costs were assessable against a judge based upon Rule 18(e) which provided that the commission may recommend other measures including the assessment of attorney fees and costs. Michigan does not have a comparable court rule.

We recognize that costs have been imposed by the Supreme Court in the past. We have also noted that this has been done without any comment or explanation by the Court. In most of the cases, the respondent either consented or failed to object to the commission's recommendations. In the most recent of these cases, *In re Thompson*, SC 124399, we note that the respondent failed to file a petition to reject or modify the commission's recommendation. *In re Trudel*, 468 Mich 1243 (2003), respondent's objection to the imposition of costs was not timely. Respondent's objection was first raised in a Motion for Reconsideration, which the Supreme Court would not consider. *In re Cooley*, 454 Mich 1215 (1997), the respondent consented to the sanctions of public censure and $3,500 in costs. *In re Edgar*, Complaint #5, and *In re Blodget*, Complaint #6, decided the same day in 1972, costs were assessed of $1,500 and $1,000 respectively, without comment by the court.

The fact that something has been done in the past is not compelling if it was done by consent or waiver, or if there was insufficient authority for the sanction. To date, the Supreme Court has not announced a specific rule of law that could be applied to future disputes under the doctrine of *stare*

decisis.

If the Supreme Court is persuaded by the majority's argument that the constitution allows for actual costs and expenses as part of the disciplinary action, we recommend it not be applied in the case at bar. As noted by the *Cieminski* court, "the type of costs that may be assessed should be known beforehand so a judge can reasonably anticipate what the costs of a defense to the commission charges may involve." *Cieminski* at pg. 9.

In 1997, the Michigan Supreme Court made it very clear that the Judicial Tenure Commission must articulate standards of judicial discipline before applying those standards in a particular case. The commission must "demonstrate that there is a consistently enforced system of judicial discipline in Michigan." *In re Brown*, 624 NW2d 744 (1997). Then, and only then, will the Supreme Court be in a position to give deference to the commission's recommendations for sanctions.

Respondent Noecker cannot be said to have been given notice of the standards to be applied and the type of expenses that could be assessed in this case. The imposition of costs in much lesser amounts such as $1,000 and $3,500 has been rare. The imposition of actual costs has been extremely rare in the history of reported cases. The commission has not set standards for the imposition of costs until today. Therefore, imposition of costs in this case, if the Supreme Court believes they are authorized by law, would violate the spirit of *In re Brown.*

If the court rules that sanctions may includes costs, we suggest that the commission use the following standard to determine when to request additional costs:

> **Conduct involving fraud, deceit, intentional misrepresentation, or false statements to the Commission, its investigators, the Master or the Supreme Court.**

Further, we recommend that the Supreme Court adopt the logic of North Dakota and Arizona that provides that if a court has the power to assess costs, it has the power to limit costs.[2] The rules of procedure for judicial discipline "shall be construed to preserve the integrity of the judicial system, to enhance public confidences in that system, and to protect the public, the courts, and the rights of judges who are governed by these rules in the most expeditious manner that is practicable and fair." MCR 9.200. The purpose of discipline is to preserve the integrity of the system. *In the Matter of Hon. Michael C. Nelson*. The goal is also to deter, but it is not to punish a judge.

Actual costs, expenses and attorney fees can be extremely high. The threat of an additional monetary sanction in addition to the loss of income from suspension or removal may have a very real chilling effect upon a judge's right to a hearing.[3] The judges of this state are entitled to know not only when costs will be assessed, but what type of costs will be assessed.

"Costs" is a term of art. Actual expenses are not necessarily costs. There is no definition of "costs" as that term relates to judicial disciplinary proceedings. We recommend that the court follow the Arizona Supreme Court and utilize Michigan court rules and statutes on civil litigation taxable costs for judicial disciplinary proceedings. Judges will have notice of the sanctions provided with taxable costs as that term is defined in the Revised Judicature Act. In addition to taxable costs, the expense of the transcript for submission to the Supreme Court would be a potential assessment.[4]

We do not believe that the authority exists to recommend these sanctions, but should the court decide otherwise, it is our goal to recommend an articulated standard for applying this sanction and a predictable basis for determining the amount. No one – the commission, the respondent or the

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[2] Arizona has adopted its costs powers to be modeled after the statutory taxable costs rules of civil procedure with an exception for the hearing transcript.

[3] For this stated reason, North Dakota capped costs at $ 5,000.

[4] Judicial disciplinary proceedings are not comparable to case evaluation wherein parties risk rejecting evaluator's decisions so the costs as defined in MCR 2.403 are neither appropriate nor predictable.

Supreme Court – will be operating in a vacuum when concrete rules are applied.

STATE OF MICHIGAN

JUDICIAL TENURE COMMISSION

Carole L. Chiamp, Esq.

Hon. Kathleen J. McCann

Hon. Jeanne Stempien

h:\fmlcmplt\fc73 partial concur partial dissent.doc

STATE OF MICHIGAN

BEFORE THE JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:
HON. JAMES P. NOECKER
Judge 45th Circuit Court,
Centreville, Michigan 49032

FORMAL COMPLAINT NO. 73

MASTER'S REPORT

John N. Fields (P26641)
Master
4455 Sunnymeade Drive
St. Joseph, Michigan 49085
(269) 428-1730

BACKGROUND

The Michigan Judicial Tenure Commission, represented by Examiner Paul J. Fischer, filed a three-count complaint on August 20, 2003 against the Hon. James P. Noecker, 45th Circuit Court Judge, Centreville, Michigan (Respondent) who is represented by Attorney Peter D. Houk.

Count I of the complaint alleges that Respondent's Persistent Use of Alcohol constituted:

a. Misconduct in office, as defined by the Michigan Constitution of 1963, Article VI, Section 30, as amended, and MCR 9.205;

b. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, Article VI, Section 30, as amended, and MCR 9.205;

c. Habitual intemperance as defined by the Michigan Constitution of 1963, Article VI, Section 30, as amended, and MCR 9.205;

d. Persistent failure to perform judicial duties, as defined by the Michigan Constitution of 1963, Article VI, Section 30, as amended, and MCR 9.205;

e. Persistent neglect in the timely performance of judicial duties, contrary to MCR 9.205 (B)(1)(b);

f. Irresponsible or improper conduct which erodes public confidence in the judiciary, contrary to the Code of Judicial Conduct, Canon 2A;

g. Conduct involving impropriety and the appearance of impropriety, contrary to the Code of Judicial Conduct, Canon 2A;

h. Failure to respect and observe the law, contrary to, among others, MCR 8.107 and MCR 8.110(C)(5); and

i. Conduct violative of MCR 9.104(1), and (2) in that such conduct:

   (i) is prejudicial to the proper administration of justice;

   (ii) exposes the legal profession or the court to obloquy, contempt, censure or reproach.

Count II of the Formal Complaint alleges Violations of the Law and Making False Statements to the Police and claims that the conduct constitutes;

a. Misconduct in office, as defined by the Michigan Constitution of 1963, Article VI, Section 30, as amended, and MCR 9.205;

b. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, Article VI, Section 30, as amended, and MCR 9.205;

c. Irresponsible or improper conduct which erodes public confidence in the judiciary, contrary to the Code of Judicial Conduct, Canon 2A;

d. Conduct involving impropriety and the appearance of impropriety, in that respondent's conduct evidenced or gave the appearance he had consumed alcoholic beverages which caused or contributed to the incident contrary to the Code of Judicial Conduct, Canon 2A;

e. Failure to respect and observe the law, contrary to, among others, MCL 257.626 b (careless driving), MCL 257.625 (driving under the influence of intoxicating liquor), and the Code of Judicial Conduct, Canon 2B; and

f. Conduct violative of MCR 9.104(1), (2), and (3) in that such conduct:

    1. is prejudicial to the proper administration of justice;

    2. exposes the legal profession or the court to obloquy, contempt, censure or reproach; and

    3. is contrary to justice, ethics, honesty or good morals.

Count III of the Formal Complaint alleges Respondent made False Statements To The Judicial Tenure Commission. The Complaint claims that Respondent's conduct constitutes:

a. Misconduct in office, as defined by the Michigan Constitution of 1963, Article VI, Section 30, as amended, and MCR 9.205;

b. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, Article VI, Section 30, as amended, and MCR 9.205;

c. Failure to cooperate with a reasonable request made by the Commission in its investigation of a judge, contrary to MCR 9.205(B)(1)(f);

d. Irresponsible or improper conduct which erodes public confidence in the judiciary contrary to the Code of Judicial Conduct, Canon 2A;

e. Conduct involving impropriety and the appearance of impropriety, contrary to the Code of Judicial Conduct, Canon 2A; and

f. Conduct violative of MCR 9.104(1), (2), and (3) in that such conduct:

(i) is prejudicial to the proper administration of justice;

(ii) exposes the legal profession or the court to obloquy, contempt, censure or reproach; and

(iii) is contrary to justice, ethics, honesty, or good morals.

The Respondent filed an Answer on or about September 16, 2003. The Michigan Supreme Court entered an Order on September 3, 2003 appointing retired 2nd Circuit Court Judge John N. Fields to serve as Master in this case. Various telephone conference calls between counsel and the Master were held, a pre-trial conference was held, a Scheduling Order was entered and pre-trial hearings were held at the Calhoun County Courthouse. The Public Hearing was held on January 13,14,15, 20, 21 and 22, 2004 in Kalamazoo, Michigan. Upon completion of the Public Hearing counsel stipulated to the submission of written closing arguments and proposed findings of fact and conclusions of law as well the right of each party to submit a written rebuttal argument. Counsel stipulated that the Master shall submit this report to the Judicial Tenure Commission by April 30, 2004.

RELEVENT LAW

- **Article VI, Section 30(2)** provides: "on recommendation of the judicial tenure commission, the supreme court may censure, suspend with or without salary, retire or remove a judge for conviction of a felony, physical or mental disability which prevents the performance of judicial duties, misconduct in office, persistent failure to perform his duties, habitual intemperance or conduct that is clearly prejudicial to the administration of justice. The supreme court shall make rules implementing the section and providing for confidentiality and privilege of proceedings"

- **MCR 9.205** provides:

  a. (A) Responsibility of Judge. A judge is personally responsible for the judge's own behavior and for the proper conduct and administration of the court in which the judge presides.

  b. Grounds for Action. A judge is subject to censure, suspension with or without pay, retirement or removal for conviction of a felony, physical or mental disability that prevents the performance of judicial duties, misconduct in office, persistent failure to perform judicial duties, habitual intemperance, or conduct that is clearly prejudicial to the administration of justice.

  (1) Misconduct in office includes, but is not limited to:

  (a) persistent incompetence in the performance of judicial duties;

  (b) persistent neglect in the timely performance of judicial duties;

  (c) persistent failure to treat persons fairly and courteously;

  (d) treatment of a person unfairly or discourteously because of the person's race, gender or other protected personal characteristics;

  (e) misuse of judicial office for personal advantage or gain, or for the advantage or gain of another; and

  (f) failure to cooperate with a reasonable request with the commission in its investigation of a judge.

  ...(3) In deciding whether action with regard to a judge is warranted, the commission shall consider all the circumstances, including the age of the allegations and the possibility of unfair prejudice to the judge because of the staleness of the allegations or unreasonable delay in pursuing the matter.

- **Michigan Code of Judicial Conduct Canon** 2 provides in pertinent part: "A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities.

  A. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

  B. A judge should respect and observe the law. At all times the conduct and manner of a judge should promote public confidence in the integrity and impartiality of the judiciary. Without regard to a person's race, gender or other protected personal characteristics, a judge should treat every person fairly with courtesy and respect. ... "

- **MCR 8.107 Statement By Trial Judge As To Matters Undecided** provides, "Every trial judge shall, on the first business day of January, May, and September of each year, file with the state court administrator a certified statement in the form prescribed by the state court administrator, containing full information on any matters submitted to the judge for decision more than four months earlier which remains undecided. The judge shall also set forth in the statement the reason the matter remains undecided. For the purpose of this rule the time of submission is the time the last argument or presentation in the matter was made or the expiration of the time allowed for filing the last brief, as the case may be. If the judge has no cases to report, the word "none" on a signed report is required.

- **MCR 8.110(C)** provides, "...(5) The chief judge of the court in which criminal proceedings are pending shall have filed with the state court administrator a monthly report setting forth the reasons for delay in proceedings:

  (A) in felony cases in which there has been a delay of 28 days between the hearing on the preliminary examination or the date of the waiver of the preliminary examination and the arraignment on the information or the indictment;

  (B) in felony cases in which there has been a delay of six months between the date of the arraignment on the information or the indictment and the beginning of trial;

(C) in misdemeanor cases in which there has been a delay of six months between the date of the arraignment on the on the warrant and complaint and the beginning of the trial;

(D) in felony cases in which a defendant is incarcerated longer than six months and in misdemeanor cases in which a defendant is incarcerated longer than 28 days.

- **MCR 9.104 Grounds for Discipline in General; Adjudication Elsewhere provides:**

(A) The following acts or omissions by an attorney, individually or in concert with another person, are misconduct and grounds for discipline, whether or not occurring in the course of an attorney-client relationship.

(1) Conduct prejudicial to the proper administration of justice;

(2) Conduct that exposes the legal profession or the courts to obloquy, contempt, censure or reproach;

(3) Conduct that is contrary to justice, ethics, honesty, or good morals;

(4) Conduct that violates the standards or rules of professional responsibility adopted by the Supreme Court;

(5) Conduct that violates a criminal law of a state or of the United States; ...

- **MCR 9.211 provides in pertinent part:**

(A)Procedure. The public hearing must conform as nearly as possible to the rules of procedure and evidence governing the trial of civil actions in the circuit court. The hearing must be held whether or not the respondent has filed an answer or appears at the hearing. The examiner shall present the evidence in support of the charges set forth in the complaint and at all times have the burden of proving the allegations by a preponderance of the evidence..."

SUMMARY OF SIGNIFICANT EVIDENCE PRESENTED AT THE PUBLIC HEARING

STIPULATIONS OF FACT

1. Respondent spoke to Kathy Jessup, a free-lance journalist whose articles appear in the Kalamazoo Gazette, the Sturgis Journal, and others, on March 13, 2003 or March 14, 2003. He told her that:

   a. he had stopped at his wife's business before the crash;
   b. he had gotten into his car from the passenger side because the driver's side was muddy;
   c. he had driven from his wife's business to Lacy's/Klinger's Party Store straddling the vehicle's console;
   d. he had accidentally pushed the accelerator when he meant to step on the brake.

2. These statements were disseminated in newspaper articles in the Kalamazoo Gazette, the Sturgis Journal, and others.

3. On March 13, 2003, Mark Alberts, a reporter for News 3 based in Kalamazoo, interviewed the Respondent at the courthouse.

4. The Respondent said that:

   a. he had inadvertently hit the gas pedal instead of the brake pedal; and
   b. he denied using alcohol before the crash.

5. These statements were disseminated on News 3 television.

6. On March 12, 2003 Respondent was presiding over the criminal trial captioned *People v Jonathan Love, Case No. 02-11207-FH.*

7. The matter recessed at 2:30 p.m. on March 12th and was scheduled to reconvene the next day at 9:00 a.m.

8. The Respondent left the courthouse at approximately 3:30 p.m. on March 12, 2003.

9. Prosecutor Douglas Fisher spoke to the Respondent later that day at approximately 4:30-4:45 p.m.

SUMMARY OF OTHER SIGNIFICANT EVIDENCE PRESENTED AT THE PUBLIC HEARING

Respondent is a Judge of the 45th Circuit Court, St. Joseph County, Michigan. He was appointed to that position in 1981. Previously he served for two years as an Assistant Prosecuting Attorney and for approximately ten years as Prosecuting Attorney of St. Joseph County, Michigan.

Kevin Bowling State Court Administrative Office (SCAO) Region II Representative from December 1985 through May 1998 testified that St. Joseph County, Michigan was part of Region II. His duties and responsibilities included assisting judges within Region II. Mr. Bowling testified that Respondent periodically failed to timely file MCR 8.107 Statements of Matters Undecided. He had to send several letters to Respondent requesting overdue statements be filed. (Exhibits 36 – 40). Mr. Bowling also testified that although Respondent served as Chief Judge of the Circuit Court he frequently failed to attend Judicial Council meetings. Mr. Bowling estimated that Respondent attended approximately 10-15% of the scheduled meetings which were intended for discussion of budget matters, scheduling and other matters of mutual concern. Additionally, Mr. Bowling testified that Respondent attended approximately 15% of Regional Circuit Judges meetings which were usually held in Battle Creek.

Mr. Bowling received complaints alleging that Respondent failed to be regularly present at the courthouse during normal court hours. Various complaints indicated that Respondent was periodically absent during the a.m. hours, p.m. hours and, on occasion, absent for the entire day. In September or October of 1994 Mr. Bowling received a telephone call from a member of Respondent's staff. As a result of the telephone call Mr. Bowling told the staff member to have Respondent wait at the courthouse for Mr. Bowling. Mr. Bowling arrived at the courthouse approximately 45-60 minutes later. Respondent, however, was not at the courthouse. Mr. Bowling located Respondent at Respondent's residence and he and Respondent had a discussion for a "couple of hours" and discussed how drinking had an impact on the court. Respondent advised that he drank occasionally to reduce job stress but denied that drinking was having an impact on his job performance. Mr. Bowling testified that he sought to assist Respondent in obtaining treatment as well as to cover the court docket.

In November of 1994, Respondent entered an inpatient treatment program at WEMAC in Grand Rapids, Michigan. Respondent was at the facility for a period of three weeks. Respondent returned to WEMAC and received further treatment from January 1995 through May 4, 1995. Mr. Bowling said that after Respondent returned in the spring of 1995, the treatment in some ways gave Respondent "a new lease on life." Unfortunately, Respondent suffered a heart

attack on December 23, 1995 and was off work for heart related reasons until April or May of 1996.

Mr. Bowling stated that the 45th Circuit Court did not have the financial resources that some other courts received. Low salaries often caused turnover among staff and Respondent did not have the assistance of a full-time administrator that is available to some other single judge courts.

James Hughes testified that he has served as the State Court Administrative Office Region II Representative since August of 1998. Mr. Hughes indicated that although due on a monthly basis, he did not receive any MCR 8.110 Speedy Trial Reports signed by Respondent from August of 1998 through September, 2000. The first such report received by Mr. Hughes from Respondent was submitted for the month of October 2000. It listed 59 delayed (as defined by court rule) criminal cases (exhibit 31). MCR 8.110 Reports were submitted by Respondent for most months thereafter. They reflect as follows:

Date	Cases	Date	Cases
10/00	59	01/02	49
11/00	55	02/02	42
12/00	no report	03/02	45
(Exhibit #31)		04/02	48
		05/02	53
01/01	48	06/02	49
02/01	25	07/02	45
03/01	13	08/02	66
04/01	12	09/02	no report
05/01	10	10/02	42
06/01	38	11/02	no report
07/01	41	12/02	29
08/01	39	(Exhibit 29)	
09/01	34		
10/01	no report	1/03	24
11/01	28	2/03	18
12/01	no report	3/03	no report
(Exhibit 30)		4/03	12
		5/03	3
		(Exhibit 28)	

In approximately 1990, an additional District Judgeship (filled by Judge William Welty) was authorized for St. Joseph County. In addition to handling District Court matters Judge Welty agreed to handle all of the 45th Circuit's domestic relations matters. He continued to do so until 2002. At that time, Respondent began handling DO cases (divorces without children) and does so at

the present time. Judge Welty continues to handle the other types of domestic relations matters.

During his testimony, Mr. Hughes compared the number of cases pending more than two years in St. Joseph County, Michigan with those of Barry County, Cass County, Isabella County, Shiawassee County, and Tuscola County. Each is a single judge circuit and each judge handled domestic relations matters, with the exception of Tuscola County. Exhibit 56 reflects that during the period of 1998 to 2001 when compared with these similar courts the 45th Circuit Court had nearly the highest number of delayed criminal cases pending two years or more. This high number occurred despite the fact Respondent was not handling any domestic relations matters until he began handling DO cases in 2002. Mark Kutas, an Administrator with the Eaton County Circuit Court testified on behalf of Respondent and was qualified by the Master as an expert in court administration and filing of Case-flow Reports. He testified that he compared nine other single judge circuits with St. Joseph County. The courts reviewed by Mr. Kutas included Hillsdale, Barry, Branch, Isabella, Sanilac, Cass, Delta, Huron and Emmitt County. Among other matters, he testified regarding comparisons of "clearance rates". According to Mr. Kutas' comparisons the clearance rate of cases by Respondent when compared to these courts ranged from worst (1999 & 2001) to fourth best among the ten courts (2003). (Exhibit E)

Mr. Hughes testified that in the fall of 2000 the situation involving Respondent took a change for the worse. About that time, Mr. Hughes was contacted by a judge from another circuit who expressed concern regarding "some odd behavior" exhibited by Respondent at the annual judicial conference. Additionally, Mr. Hughes had received various complaints and concerns from litigants and citizens regarding the slowness of pace of the cases, some erratic behavior and other such things including complaints regarding Respondent's absence from the court, tardiness and irregular hours. Mr. Hughes also noted that Respondent often times would not attend local Judicial Council meetings of the judges of St. Joseph County. As a result, Mr. Hughes spoke with the director of the State Bar of Michigan Lawyers and Judges Assistance program. Mr. Hughes testified that, "...the director Mr. Livingston, myself and two judges who were part of the Lawyers and Judges Assistance Program, came to Centreville to the courthouse and we met with Judge Noecker in the conference room there in his office, discussed these concerns and discussed the potential for assistance and the (sic) discussed the potential for entering into a voluntary monitoring agreement whereby the judge would adhere to a program of counseling and meetings, and he basically agreed to that." (T. pg 636) As a result, the Lawyers and Judges Assistance Program drafted an agreement which included several components and Respondent voluntarily signed it on January 16, 2001. The agreement was to cover a period of two years, until January, 2003. (Exhibit 35)

In addition to other requirements, the agreement required Respondent to submit to random drug and alcohol screening tests within six hours of notification.

Mr. Hughes was ultimately designated to monitor the testing. In the course of the contract Mr. Hughes sought to have Respondent take a test, "probably a dozen and a half times." (T. pg 638). On three occasions Respondent was requested to do a urine drop within six hours and he did so. On two occasions Respondent spoke with Mr. Hughes and did not test. Respondent testified that he did not test on one occasion because he was ill and did not test on another occasion because he was busy with a court motion. Mr. Hughes indicated on the other occasions he was unable to actually speak with the Respondent to request testing. If Respondent was not immediately available at his office Mr. Hughes did not leave a message with staff due to the confidentiality of the agreement. (T. pgs. 638-642.)

Respondent drafted a Caseflow Management Plan that was submitted to SCAO in March of 2002 and thereafter approved. Mr. Hughes testified that he recommended the approval of the plan even though it did not include a requirement for a "next action date". Mr. Hughes stated that he recommended approval "...because they were an improvement on what was nothing." Mr. Hughes continued, " There was no case flow management plan in the Circuit Court and the initiation of our help in developing one was as a result of the problems that became identified that we have talked about earlier with respect to the Speedy Trial Reports and the 8.107." (T. pg 655).

Mr. Hughes testified that as a result of Respondent's alleged problems in 2001 he recommended that Respondent be removed as Chief Judge. However, no action was taken at that time. Mr. Hughes confirmed that the current Judicial Tenure Commission complaint was filed by the State Court Administrative Office. Mr. Hughes said that during his time as Region II representative he had spent more time seeking to address matters with Respondent than with any of the other approximately 160 judges within the region.

Judge Philip D. Schaefer, a Circuit Judge from Kalamazoo County, was appointed Chief Judge of the 45th Circuit Court on March 24, 2003 and he served in that capacity until December 31, 2003. He testified that following his appointment as Chief Judge he reviewed the 45th Circuit Court's records and determined that there were 27 pending civil cases that had been filed during the years 1996,1997,1998,1999 and 2000. He further testified that Respondent had averaged 42 and one-half cases on the MCR 8.110 Speedy Trial Report between January 2002 and February 1, 2003. Accordingly, Judge Schaefer instituted an expedited trailer docket that he referred to as a " rocket docket". With the assistance of Judge Welty and visiting judges, Judge Schaefer was able to reduce the number of cases on the Speedy Trial Report to three by May 1, 2003. Judge Schaefer commented that, in some cases, there were good reasons for the delay. However, in general, he felt that the older cases could have been disposed of a lot sooner if Respondent had paid appropriate attention to the importance of calendaring and including next action dates.

Judge Schaefer stated that he directed Respondent to "personally" notify him when Respondent was discharged from WEMAC. Judge Schaefer testified that Respondent failed to personally notify him and that he didn't learn that Respondent had been discharged from WEMAC for several days thereafter until he received notice from Attorney Houk.

Several attorneys, who are attorneys of record on the cases that had been filed more than two years earlier, testified that there were a variety of reasons for the delay in the cases, e.g. third-party actions, bankruptcy stays, etc. Each attorney stated that Respondent was always courteous, patient and very meticulous in his rulings. None indicated that they had ever seen or had reason to believe that Respondent had been drinking or was intoxicated while on the bench. Mark Brown, the 45th Circuit Court Administrator/Law Clerk since the mid-1990s testified that Respondent had told him in the mid 1990s that Respondent was an alcoholic. Mr. Brown stated that he has never known Respondent to drink during the workday and that he has never seen Respondent intoxicated in court.

EVENTS OF MARCH 12, 2003

Evidence was presented at the hearing that indicated Respondent was conducting a criminal jury trial on March 12, 2003. Respondent adjourned the trial for the day at approximately 2:30 p.m. following a Motion for A Directed Verdict which Respondent took under advisement. Respondent left the court at approximately 3:30 and went to his residence. Respondent testified that he worked on the opinion on his computer located at his residence. He stated that he called Administrator/Law Clerk Mark Brown at 3:47 p.m. to discuss the language he would use in the opinion and that he also telephoned Prosecutor Douglas Fisher to advise him of the ruling. Respondent stated he left his home at approximately 4:30-4:45 p.m. to obtain firewood from his wife's warehouse located near the Klinger Lake Trading Post in White Pigeon Township, St. Joseph County, Michigan.

Respondent testified that he got "mud on his shoes" while at the warehouse. He stated that he did not want to get the mud in his car. Thus, when leaving the warehouse he got into his car on the passenger side, slid over the center console placing his buttocks on the passenger seat and kept his right leg straddled across the center console. He testified that he used his left foot to accelerate and brake because his right foot remained straddled over the center console. Respondent indicated he drove the approximately 50 yards in this manner to the Klinger Lake Trading Post where his vehicle struck the building resulting in damage of approximately $15,000 – $20,000 to the building and contents.

Several people were present at the Klinger Lake Trading Post at the time Respondent's vehicle collided with the building. Harry West testified that he was outside the building at the time of the collision. Mr. West, who has known

Respondent for many years stated that Respondent was "sitting behind the driver's wheel....directly behind the wheel"...(T.- pg. 44).

Denny Seager, Sr. testified that he was also outside the building at the time Respondent's vehicle collided with the building. He was asked by Examiner Fischer:

Q: Where was he seated in the car, in the vehicle?
A. Behind the driver's seat.
Q: Did you see him move from any other part of the car to get to the driver's seat?
A. No, Sir. (T. - pg. 135)

Scott Carpenter was also outside at the time Respondent's vehicle collided with the building. He was asked by Examiner Fischer:

Q: Did you see where he was seated in the car?
A. He appeared to be seated upright on the driver's side.
Q: Did you see him move at all from the passenger side to the driver's side?
A. No.
Q: Did you see him move from perhaps the middle of the car or the console area to the driver's side?
A. I did not observe that. (T-pgs. 106-107)

Janice Pankey, co-owner of the Klinger Lake Trading Post, was inside the building at the time of the collision. Although she did not see the collision occur she stated that immediately after the collision she looked up through a window and saw Respondent in his vehicle. Examiner Fischer inquired:

Q. Where was he seated in the vehicle?
A. In the driver's seat.
Q: How was he seated?
A. Sitting up. (T- pg. 161)

Evidence reflects that Respondent was traveling a relatively slow rate of speed at the time he collided with the building. It further reflects that Respondent appeared to be traveling at an approximately constant speed after turning into the parking lot until colliding with the building. Mr. West stated, "...(he) did not even slow down, and collided with the building." (T- pg. 41). He further stated that Respondent was traveling "...3-5 miles an hour." (T – pg. 41).

Scott Carpenter testified when asked by Examiner Fischer:

Q: What happened?
A. It just – it didn't appear that the vehicle had slowed down and it just ran into the building.
Q: You know approximately how fast it was going?
A. It wasn't going drastically fast, but it did not slow down whatsoever.

The Master: It did not what?
The Witness: Slow down

By Mr. Fischer: Did it speed up?
A. No. (T- pgs. 105-106)

Mr. West, who previously owned a bar and has known Respondent for a long time, stated, "when Jim has had a few drinks in him he will walk heel and toe. And lean slightly forward and walk a little bit like a quick walk forward... I would say the walk that he went into the store with is more or less when he's had drinks and relaxed a little bit." (T-pgs. 51-52). Mr. West went on to state, "...I did not smell alcohol on him, but I felt he had been drinking." (T-pg.83). When testifying regarding his conversation with Trooper Wheeler on March 12, 2003, Mr. West stated "...Then he asked me did I think the Judge had been drinking. And I answered yes. And I specifically stated that his face was red and due to his walk up to the front door that I observed I felt that he had been drinking." (T- pgs. 84-85). Mr. West went on to state, "I do believe that Judge Noecker was drinking at the time of the crash." (T- pg. 91). And he stated, "I have had experience with Mr. Noecker and I have seen him both very sober and I have seen him very drunk..." (T- pg.95).

Denny Seager, Sr. has worked in a bar for 20 years. He was asked by Examiner Fischer:

Q: Did you notice anything about the way he was walking?
A. I'd say he wasn't walking real straight.
Q: Would you say he was staggering?
A. In a way, yes.
Q: Well you tell me how was it you thought he was walking.
A. It wasn't straight, but he wasn't really staggery or anything like that.
Q. Was he at all wobbly?
A. A little bit. (T – pgs. 135-136).

After the collision Respondent walked into the building. He stood a few feet inside the doorway and apologized to Ms. Pankey and offered to pay for the damages. Ms. Pankey state she wanted her husband, who was ice fishing. Respondent then said that he was going to look for her husband and Respondent immediately left despite being urged by a witness to remain. Respondent testified

that he attempted to find Mr. Pankey at three locations on the lake but was unable to find him. Thereafter, Respondent drove to his residence and arrived home prior to 6:00 p.m.

Respondent testified that while at home his wife took his blood pressure which registered a very high reading. Respondent stated that he decided to drink vodka to bring his blood pressure down. He stated that he drank 3-5 ounces of vodka which took about 5-10 minutes to drink.

Michigan State Police Trooper Craig Wheeler testified that he was dispatched to the Klinger Lake Trading Post. Respondent had left the Klinger Lake Trading Post prior to the time that Trooper Wheeler arrived. Trooper Wheeler spoke with Ms. Pankey and other witnesses. He then went to the Michigan State Police post at White Pigeon and spoke with Sgt. Steven Barker. After his discussion with Trooper Wheeler, Sgt. Barker decided that he and Trooper Wheeler should go to Respondent's residence. Upon arrival at Respondent's residence Trooper Wheeler spoke with Mrs. Noecker and Sgt. Barker spoke with Respondent. Sgt. Barker testified that he could smell a slight odor of alcohol on Respondent's breath. He also testified that Respondent appeared to be attempting to keep a distance between Respondent and Sgt. Barker. According to Sgt. Barker, Respondent would walk away when Sgt. Barker would seek to stand near Respondent and Respondent would pace in a manner seeking to keep a distance from Sgt. Barker. Sgt. Barker testified that he asked Respondent to take a preliminary breath test. Respondent agreed and took a test at 7:22 p.m. which reflected a reading of.10[1]. (If the preliminary breath test results are not admissible the Master's findings of fact and conclusions of law will be unchanged due to the substantial nature of the other admissible evidence in this case.)

Respondent has stated that he has realized he is an alcoholic since 1994. However, he doesn't believe his drinking has affected his work at the court. Respondent testified that he doesn't drink between 8:00 a.m. and 5:00 p.m. and

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[1] At a pretrial hearing the Master denied Respondent's Motion to Amend the Answer. The Master ruled that MCR 2.111(E) provides that allegations that require a responsive pleading are admitted if not denied in the responsive pleading and affirmative defenses must be specifically pled with the Answer. Additionally, MCR 9.209(B) requires that affirmative defenses be stated within the Answer or they will not be considered. Respondent, in paragraph 18 of his Answer admitted that he had taken a preliminary breath test with a result of .10 and did not state an affirmative defense with respect to this matter. In the event the Master's ruling that Respondent's admission is binding is incorrect, the Master conducted a separate evidentiary hearing on January 8, 2004 to determine whether the Administrative Rules for taking a preliminary breath test had been complied with. At the conclusion of the hearing the Master ruled that the police failed to determine that Respondent had not placed anything in his mouth, regurgitated, burped, etc. for a period of 15 minutes prior to the test as required by Administrative Rule R 325.2655(2)(b). If the Master is correct in ruling that the admission is binding, the ruling at the evidentiary hearing regarding compliance with the Administrative Rules is moot. If the Master is incorrect that the admission is binding, the ruling that the Administrative Rules were not complied with would result in the PBT being suppressed.

that he would not drink the night before a trial. He stated that he was periodically absent from the court because he would work at his residence on court opinions. He stated that his computer at home was faster than the one at work and that he had fewer distractions at home than at the court. He also stated that his failure to file MCR 8.110 Speedy Trial Reports prior to November 2000 was due to the fact that the Prosecutor's Office actually scheduled the criminal trials and the court didn't have the means to prepare the reports. He stated that the Prosecutor's Office currently continues to schedule the criminal trials but fills out the MCR 8.110 forms for Respondent which he signs and submits to SCAO. He partially attributed the delays in completion of proceedings to the fact that he writes a substantial number of very precise written opinions.

Respondent stated that he once again began drinking on January 1, 1998. Respondent advised that he previously believed it was possible to control his drinking. He further stated that over the past few years his drinking only occurred at his residence.

Harvey Ager, M.D. is a Board Certified Psychiatrist who is the former co-director of the alcoholism unit at Detroit Memorial Hospital. Approximately 40% of his practice is devoted to clinical work and 60% of his practice is devoted to evaluations. About 4% of the clinical portion of his current practice involves alcohol. Dr. Ager testified that he examined Respondent in December 2003. Respondent stated to Dr. Ager that his drink of choice was vodka and that his last drink occurred on March 28, 2003. Dr. Ager testified that alcoholics generally have issues with attendance, deadlines, instability in work performance, disorganization, and difficulty with attending meetings. Dr. Ager stated that Respondent at first denied and later admitted drinking while on the State Bar of Michigan Lawyers and Judges Assistance Program. Respondent also strongly denied abusing alcohol. Citing Respondent's significant denial and that past treatment programs have not been successful, Dr. Ager indicated that Respondent's prognosis is "guarded at best". He stated that he believes Respondent is motivated in the short-run. However, he stated in the long run the prognosis is much more unclear.

Dr. Norman Miller, M.D. is a professor of psychiatry at Michigan State University. He is Board Certified in psychiatry, neurology, and addiction psychiatry, which is the study and treatment of people who suffer from addictive disorders. Dr. Miller's credentials and expertise are substantial. His practice is predominantly limited to the treatment of alcoholics and drug addiction. He examined Respondent on November 28, 2003. He was impressed by Respondent's intelligence which he stated was clearly in the "superior range". He indicated that Respondent's memory is in the normal range and Respondent shows no signs of dementia.

Dr. Miller testified that Respondent has "alcohol dependence" and has had it for a period of time. He also stated that Respondent has "obsessive-compulsive

traits" which he explained means that Respondent is very meticulous and pays close attention to detail. Dr. Miller testified that Respondent admitted to a "loss of control" over alcohol. Dr. Miller indicated that some characteristics of some people with alcohol disorders include absenteeism, irregular hours, lack of focus, and lack of attention. He stated it is very common for alcohol dependents of the highest integrity to deny and minimize their use of alcohol.

Dr. Miller stated that he believes Respondent is a "motivated individual" who is taking and undergoing necessary treatment to get help. He indicated that Respondent seems to be committed to recovery and believes that Respondent's prognosis is "quite favorable". He urged that any monitoring treatment program have "consequences" if there is a failure to comply with the provisions.

SPECIFIC FINDINGS OF FACT

The Michigan Judicial Tenure Commission has the burden of proving the allegations by a preponderance of the evidence. MCR 9.211(A); In Re Ferrara, 458 Mich 350, 360 (1998). Following a review of the evidence as a whole, findings of fact are made as follows:

1. Respondent has been a judge of the 45th Circuit Court, St. Joseph County, Michigan since 1981. Respondent previously served for ten years as Prosecuting Attorney of St. Joseph, County, Michigan and two years as an Assistant Prosecuting Attorney.

2. Respondent currently has an alcohol dependence and has been a self-acknowledged alcoholic since 1994.

3. Respondent has attended or participated in several substance abuse treatment programs including:

   A. WEMAC – 1994
   B. WEMAC – 1995
   C. State Bar of Michigan Lawyers and Judges Assistance Program – 2001 to 2003
   D. WEMAC – March to April 2003. Respondent was asked to leave by WEMAC and did not successfully complete the program.
   E. Hazelden in Center City, Minnesota – 2003

4. Respondent failed to file MCR 8.110 Speedy Trial Reports for several years until October 2000. Respondent's claim that he did not have the ability to submit the reports prior to October 2000 due to the fact the Prosecuting Attorney schedules criminal cases is without merit because: a) the Court could have begun scheduling cases and keeping statistics rather than the Prosecuting Attorney's Office doing so or b) Respondent

could have received statistical information from the Prosecutor's Office and, if satisfied that the information was accurate, signed and submitted the reports to the State Court Administrative Office. This later method is the procedure currently being utilized by the 45th Circuit Court.

5. The MCR 8.110 reports that were submitted usually reflected an unreasonably high number of cases that had encountered undue delay. Respondent's alcohol dependence was a causal factor in the undue delay in the handling and completion of cases.

6. Respondent's MCR 8.107 Statement of Matters Undecided Reports periodically reflected an unreasonably high number of cases awaiting a decision more than four months after Respondent took the matters under advisement. Respondent also periodically failed to file the MCR 8.107 Reports timely although they were usually filed within a relatively short period of time after the due date.

7. Respondent was periodically absent from the courthouse during normal court hours resulting in complaints to the State Court Administrative Office.

8. Respondent infrequently attended scheduled Judicial Council meetings with other judges from St. Joseph County. He only attended approximately 10 to 15% of the meetings which were scheduled for the purpose of reviewing budgets, scheduling, and other matters of common concern.

9. Respondent infrequently attended regional meetings of Southwestern Michigan circuit judges. He only attended approximately 15% of such meetings.

10. Respondent's alcohol dependency was a proximate cause of Respondent's failure to periodically enter timely legal decisions in matters taken under advisement.

11. Respondent's alcohol dependency was a proximate cause of Respondent's failure to conduct certain proceedings and complete cases within the time frames referenced in MCR 8.110 Reports.

12. Respondent's lack of proper attention to appropriate case-flow management procedures was also a factor in the undue delay in the conduct of certain proceedings and completion of many cases.

13. Although Respondent periodically failed to render decisions timely and frequently failed to conduct certain proceedings and complete cases in a timely manner, many attorneys spoke favorably regarding Respondent's courteous treatment of counsel and litigants.

14. On March 12, 2003, Respondent adjourned a criminal jury trial at 2:30 p.m. after taking a Motion For A Directed Verdict under advisement.

15. Respondent left the courthouse at approximately 3:30 p.m. on March 12, 2003 and went to his residence.

16. Respondent telephoned Court Administrator/Law Clerk Mark Brown at approximately 3:47 p.m. on March 12, 2003 to discuss the language he would use in his opinion. Mr. Brown did not have any indication at that time that Respondent had been drinking.

17. Respondent telephoned Prosecuting Attorney Douglas Fisher at approximately 4:30 p.m. on March 12, 2003 to advise him of Respondent's decision on the Motion For A Directed Verdict. Mr. Fisher did not have any indication that Respondent had been drinking.

18. Shortly after 5:00 p.m. on March 12, 2003 Respondent drove to his wife's warehouse located approximately 50 yards from the Klinger Lake Trading Post in White Pigeon Township, St. Joseph County, Michigan.

19. Respondent left the warehouse and drove to the Klinger Lake Trading Post. At approximately 5:20 p.m. Respondent's vehicle collided with the Klinger Lake Trading Post building resulting in $15,000 - $20,000 damage to the building and its contents.

20. The collision of Respondent's vehicle with the building was witnessed by Harry West, Denny Seager, Sr. and Scott Carpenter who were outside the building at the time of the collision.

21. Janice Pankey, co-owner of the Klinger Lake Trading Post, was inside the building and looked up through a window immediately after the collision.

22. Respondent was seated in an upright position immediately prior to and immediately after his vehicle collided with the building.

23. Respondent did not speed up or significantly slow his vehicle down immediately prior to the collision with the building.

24. Respondent exited his vehicle on the driver's side and walked in a manner that indicated he had been drinking alcoholic beverages. Respondent entered the Klinger Lake Trading Post. He stood near the door and offered an apology to the co-owner Janice Pankey and stated he would pay for the damages.

25. Respondent's walk was a factor causing Harry West and Denny Seager, Sr. to believe Respondent had been drinking.

26. Janice Pankey stated that she wanted her husband who was ice fishing.

27. Respondent stated he would look for Mr. Pankey and left the store despite a statement by a witness that he should remain at the store.

28. Respondent returned to his residence without making contact with Mr. Pankey.

29. Michigan State Police Trooper Craig Wheeler was dispatched to the Klinger Lake Trading Post and spoke with individuals at that location. Respondent had left the store prior to Trooper Wheeler's arrival.

30. Trooper Wheeler returned to the Michigan State Police post in White Pigeon and spoke with Sgt. Steven Barker.

31. Sgt. Barker and Trooper Wheeler went to Respondent's residence and spoke with Respondent and Respondent's wife separately.

32. Respondent had a slight odor of alcohol when speaking with Sgt. Barker.

33. Respondent tried to maintain a physical distance between himself and Sgt. Barker while they were talking. He did so by stepping away from Sgt. Barker and pacing.

34. Respondent advised Sgt. Barker that :

1. He had stepped in the mud while at his wife's warehouse.
2. He had driven his vehicle from the warehouse approximately 50 yards to the Klinger Lake Trading Post.
3. Respondent stated that his foot had slipped off the brake and onto the gas and his vehicle struck the side of the building.
4. He went inside the Klinger Lake Trading Post.
5. He unsuccessfully went to look for Mr. Pankey.
6. He returned home.
7. His wife took his blood pressure which registered a very high reading.
8. His wife poured a glass of vodka for him.
9. Respondent later stated that he poured his own glass of vodka rather than his wife pouring it for him.
10. Respondent consumed the drink of approximately 3-5 ounces of vodka in an attempt to reduce his blood pressure.

11. He did not consume any alcohol prior to the collision with the building.

35. Respondent took a preliminary breath test at 7:22 p.m. which reflected a reading of .10.

36. Respondent stated that it never crossed his mind that he should stay at scene of the collision until the police arrived. Respondent is a judge and a former prosecuting attorney. This statement of Respondent is not credible.

37. Respondent stated he didn't think about the impact that consuming 3-5 ounces of vodka after he had arrived home would have upon his claim that he had not consumed alcohol before the collision at the Klinger Lake Trading Post. Respondent is a judge and a former prosecuting attorney. This statement of Respondent is not credible.

38. Respondent stated to the Michigan Judicial Tenure Commission that he had not consumed alcohol prior to the collision.

39. Respondent's statements to the media, police, the Michigan Judicial Tenure Commission and to the Master at the Public Hearing that he had not been drinking prior to the collision were not accurate.

40. Respondent consumed alcoholic beverages prior to the collision at the Klinger Lake Trading Post on March 12, 2003. Alcohol was a factor in the collision of Respondent's vehicle with the building.

CONCLUSIONS OF LAW

Following a review of the evidence as a whole, the Master makes the following conclusions of law and finds that Respondent's conduct constitutes:

1. Misconduct in office, as defined by the Michigan Constitution of 1963, Article VI, Section 30, as amended, and MCR 9.205;

2. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, Article VI, Section 30, as amended, and MCR 9.205;

3. Habitual intemperance, as defined by the Michigan Constitution of 1963, Article VI, Section 30, as amended, and MCR 9.205;

4. Persistent failure to perform judicial duties, as defined by the Michigan Constitution of 1963, Article VI, Section 30, as amended, and MCR 9.205;

5. Persistent neglect in the timely performance of judicial duties, contrary to MCR 9.205(B)(1)(b);

6. Failure to cooperate with a reasonable request made by the Commission in its investigation of a judge, contrary to MCR 9.205(B)(1)(f);

7. Irresponsible or improper conduct which erodes public confidence in the judiciary, contrary to the Code of Judicial Conduct, Canon 2A;

8. Conduct involving impropriety and the appearance of impropriety, contrary to the Code of Judicial Conduct, Canon 2A;

9. Conduct violative of MCR 9.104(1) and(2) and (3) in that such conduct:

   (i) is prejudicial to the proper administration of justice;

   (ii) exposes the legal profession or the courts to obloquy, contempt, censure or reproach; and

   (iii) is contrary to justice, ethics, honesty, or good morals.

Respectfully submitted,

April 30, 2004

John N. Fields
Master

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room,

in the City of Lansing, on the 8th day of

December in the year of our Lord one thousand nine hundred and seventy-one

Present the Honorable

THOMAS M. KAVANAGH,
Chief Justice,
EUGENE F. BLACK,
PAUL L. ADAMS,
THOMAS E. BRENNAN,
THOMAS G. KAVANAGH,
JOHN B. SWAINSON,
G. MENNEN WILLIAMS,
Associate Justices

In re Ernest J. Somers

52938

Upon de novo examination of the record submitted in this cause, this Court's order of December 30, 1970 stated the finding that District Court Judge Ernest J. Somers was guilty of misconduct in office, ordered that he be censured for such misconduct, and further ordered that he appear before this Court for the purpose of administration of censure and determination of punishment.

PURSUANT TO SUCH ORDER Judge Ernest J. Somers appeared before the Court on the 8th day of January 1971, at which time the Court issued its censure AND FURTHER ORDERED that District Judge Ernest J. Somers pay $1,000 (one thousand dollars) to the Clerk of this Court as a partial reimbursement of the costs of these proceedings.

STATE OF MICHIGAN—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing,

this 8th day of January in the year of our Lord one thousand nine hundred and seventy-one.

Donald F. Winters Clerk.

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, held at the Supreme Court Room, in the City of Lansing, on the 6th day of September in the year of our Lord one thousand nine hundred and seventy-two.

Present the Honorable

THOMAS M. KAVANAGH,
Chief Justice,
EUGENE F. BLACK,
PAUL L. ADAMS,
THOMAS E. BRENNAN,
THOMAS G. KAVANAGH,
JOHN B. SWAINSON,
G. MENNEN WILLIAMS,
Associate Justices

In the Matter of

JAMES H. EDGAR,
District Judge,
55th Judicial District, 53830
Ingham County,

Respondent.

BEFORE THE MICHIGAN
JUDICIAL TENURE COMMISSION.

Proceedings on Complaint against the Respondent herein having been held before the Michigan Judicial Tenure Commission, the Decision, Recommendation, and entire record of the said Commission having been filed with this Court, all pursuant to and as provided by GCR 1963, 932; and this Court having fully considered all of the foregoing and having ordered that respondent appear before this Court for the purpose of administration of censure and determination of punishment,

PURSUANT TO SUCH ORDER Judge James H. Edgar appeared before the Court on the 6th day of September, 1972, at which time the Court issued its censure and FURTHER ORDERED that District Judge James H. Edgar pay $1,500 (one thousand five hundred dollars) to the Clerk of this Court as a partial reimbursement of the costs of these proceedings.

Black, J., not participating.

STATE OF MICHIGAN—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 6th day of September in the year of our Lord one thousand nine hundred and seventy-two.

Donald F. Winters
Clerk.

Statement by Chief Justice Thomas
M. Kavanagh at Court Session
Wednesday, September 6, 1972

IN THE MATTER OF JAMES H. EDGAR,
DISTRICT JUDGE, 55th JUDICIAL
DISTRICT, INGHAM COUNTY, RESPONDENT,
Before the Judicial Tenure Commission.

* * * * * * * * *

You are a lawyer and a judge, so you are well-acquainted with the charges filed against you by the Michigan Judicial Tenure Commission, charges found to be matter of fact in hearings before the master appointed by this Court. In fact, by your consent to public censure you have agreed... and admitted...that the numerous and flagrant violations of your oath of office, cited in the Commission's recommendations, constitute judicial misconduct in office.

This Court has had the entire sorry record before it, and six members of the Court, Justice Eugene F. Black not participating, have adopted the recommendation of the Judicial Tenure Commission that you be publicly censured.

The record showed there was no intent on your part to specifically commit immoral acts, although to much of the general public, accounts of your activities would certainly tend to indicate otherwise.

Neither does the record indicate in any way that the functions of the 55th district court were impaired by your conduct.

But the record clearly shows your folly -- that while occupying the office of district judge, you displayed the most crass behavior...so tawdry, in fact, that you have brought dishonor and public disgrace to the office which you hold.

Today, perhaps as never before in the history of the judicial system...with the courts under attack from various sources...it is more imperative than ever before that all members of the judiciary...conduct themselves in a manner to reflect

only honor on the system. To do otherwise, not only destroys the trust placed in members of the judiciary by the citizens of this state, and violates the judicial canons of ethics, but such dishonorable actions, tend to give substance to otherwise unjustifiable criticism of the judicial system.

The public must have confidence in the judicial system and respect for those who administer justice. Without this respect the entire system suffers, and that means the people of this state suffer.

You have undermined the respect for the court and the office you hold.

Before this Court imposes on you its order of censure and assessment of costs, is there anything you wish to say?

You, James H. Edgar, by your actions have shamefully discredited the office you hold, and because you have, this Court must condemn you and censure you. The Judicial Tenure Commission and the people of this state were put to considerable expense to investigate the charges made against you, and to provide hearings on those charges. Because of this expense, in addition to this public censure, you are hereby assessed $1,500.00 in costs.

This is the order of the Court.

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN Held at the Supreme Court Room,

in the City of Lansing, on the 6th day of

September in the year of our Lord one thousand nine hundred and seventy-two.

Present the Honorable

THOMAS M. KAVANAGH,
Chief Justice,
EUGENE F. BLACK,
PAUL L. ADAMS,
THOMAS E. BRENNAN,
THOMAS G. KAVANAGH,
JOHN B. SWAINSON,
G. MENNEN WILLIAMS,
Associate Justices

In the Matter of

JAMES LEE BLODGETT,
District Court Magistrate,
55th Judicial District,
Ingham County,

Respondent.

53831

BEFORE THE MICHIGAN
JUDICIAL TENURE COMMISSION.

Proceedings on Complaint against the Respondent herein having been held before the Michigan Judicial Tenure Commission, the Decision, Recommendation, and entire record of the said Commission having been filed with this Court, all pursuant to and as provided by GCR 1963, 932; and this Court having fully considered all of the foregoing and having ordered that respondent appear before this Court for the purpose of administration of censure and determination of punishment,

PURSUANT TO SUCH ORDER Magistrate James Lee Blodgett appeared before the Court on the 6th day of September, 1972, at which time the Court issued its censure and FURTHER ORDERED that District Court Magistrate James Lee Blodgett pay $1,000 (one thousand dollars) to the Clerk of this Court as a partial reimbursement of the costs of these proceedings.

Black, J., not participating.

STATE OF MICHIGAN—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing,

this 6th day of September in the year of our Lord one thousand nine hundred and seventy-two.

Donald F. Winters
Clerk.

Statement by Chief Justice Thomas
M. Kavanagh at Court Session
Wednesday, September 6, 1972

IN THE MATTER OF JAMES LEE BLODGETT,
DISTRICT COURT MAGISTRATE, 55th
JUDICIAL DISTRICT, INGHAM COUNTY,
RESPONDENT, Before the Michigan
Judicial Tenure Commission.

* * * * * * * * * * * *

You are neither a lawyer nor a judge, but this Court is assured you are well aware of the charges filed against you by the Michigan Judicial Tenure Commission. The fact that you are neither a lawyer nor a judge, while seeming to remove you from direct responsibility under the Canons of Judicial Ethics and those of the law profession, does not exempt you from the responsibility placed on you with your appointment by the Judge of the 55th district court.

With that appointment you became not only an employee of the Court, but an officer of the Court, subject to rules and discipline of the Court.

By your consent to public censure, without hearings before the master appointed by this Court, you have agreed... and admitted...that the numerous and gross violations cited in the complaint constitute misconduct in the office you hold.

This Court has reviewed the dismal array of complaints against you as filed by the Tenure Commission, and the Court has reviewed the Commission's recommendations. Six members of the Court, Justice Eugene F. Black not participating, have adopted the recommendation of the Judicial Tenure Commission that you be publicly censured.

The recommendations for public censure as presented to the Court concerning your behavior noted that the findings

of fact disclosed no immoral intent, and that the functioning of the 55th District Court was not impaired by your conduct.

While the record showed there was no intent on your part to specifically commit immoral acts, to much of the general public, accounts of your activities would certainly tend to indicate otherwise.

However, the findings of fact disclose that while occupying the office of Magistrate, your vulgar misconduct was manifestly offensive to several employees of the court. Your odius actions were humiliating to those around you, ard were degrading to the Court.

As an employee of the Court you are charged with maintaining the confidence in the judicial system which is imperative if the system is to work for the benefit of those who seek justice.

You have disregarded this responsibility in the most ignoble manner.

Before this Court imposes on you its order of censure and assessment of costs, is there anything you wish to say?

You, James Lee Blodgett, by your actions have shamefully discredited the office you hold, and because you have, this Court must condemn you and censure you. In addition to this public censure, you are hereby assessed $1,000.00 in costs.

This is the order of this Court.